IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SEVENTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1771 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07/03/2003 in WP NO : 6297 OF 1995 on the file of the High Court.)

Between:

Sikender Ali Khan, S/o Ahmed Ali Khan,
R/o Kavval Village, Jannaram Mandal, Adilabad District.

..... APPELLANT

AND

1 The Conservator of Forests, Adilabad.
2 The Regional Forest Officer, Jannaram, Adilabad.
3 The Forest Range Officer, Birsaipet, Adilabad.

.....RESPONDENTS

Counsel for the Appellant:MR.M.DHANANJAY REDDY

Counsel for the Respondents: GP FOR FORESTS

The Court made the following :

ORAL ORDER: (per the Hon'ble the Chief Justice)

Appeal is against the order passed by learned single Judge dismissing the appellant's writ petition.

Appellant in the writ petition had questioned the action of the second respondent in not issuing transit permits in respect of the timber obtained by felling trees and cutting the same into pieces as enumerated by the Forest Range Officer in the list submitted with his covering letter dated 13-1-1995 in survey No.9 and 111 situated in Odamput village, Kaddam Mandal, Adilabad District. As per the allegations made in the petition, petitioner completed the felling of trees in February 1994 lawfully and submitted log list in the office of the Divisional Forest Officer in September, 1994. Felling was done from a patta land. According to the petitioner-appellant, there was inspection carried out and the log register was found to be correct. When the petitioner applied for issuance of transit permits, the same were denied to him on the ground that petitioner had violated the provisions of the A.P. Forest Act and had in fact obtained permits for felling trees by deceiving the forest officials. Pending writ petition, interim orders were passed by learned single Judge directing permits to be issued in favour of the petitioner subject to furnishing security, which was furnished and even bank guarantee was given. The timber was thus transported out and as a matter of fact, nothing survived in the writ petition. The only question which remained to be decided was whether the petitioner was within his rights to have taken out the timber or that it was lawfully felled timber or that he had committed any other offence. Learned single Judge instead of leaving the parties to work out their remedies in accordance with the provisions of the A.P. Forest Act, proceeded to take a decision on merits whether or not the timber taken out was lawfully felled and whether or not the petitioner is entitled to fell the timber and held that the Forest Department is entitled to recover an amount of Rs.4,13,956/- from the petitioner being the value of 277 teak logs. The bank guarantee furnished by the petitioner was got encashed by the respondents.

The course adopted by the learned single Judge in deciding disputed question of fact was not proper in writ jurisdiction. We may refer to Section 44 of the A.P. Forest Act, 1967 which lays down that when there is reason to believe that a forest offence was committed in respect of any timber, such timber or forest produce and other articles would be liable to be seized by the Forest Officer, whereafter a report is required to be submitted to the Magistrate and the seized property would be liable to be kept in the custody of the Forest Officer. In the instant case also, timber was lying in the custody of the Forest Officers and was released pursuant to the interim order passed in the writ petition. There was C.C.No.573 of 1995 also filed. The Forest Department had taken recourse to the proceedings before the Magistrate and such criminal case is still pending where the question as to whether the petitioner has or has not committed any forest offence will have to be decided. It was not necessary for the learned single Judge to have passed the impugned order. For that reason, we proceed to allow the appeal, set aside the impugned order and direct that the amount of bank guarantee, which is now lying with the Forest Department and stands encashed will be subject to the orders to be passed by the criminal court. In the event of the criminal court coming to the conclusion that the petitioner had not committed any offence and entitled to the amount, appropriate orders will be passed by the criminal court. The observations made by the learned single Judge while disposing of the writ petition will not come in the way of the criminal court to take an appropriate decision in accordance with law.

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DEVINDER GUPTA, CJ

17-11-2004

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C.V.RAMULU, J

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To

1 The Conservator of Forests, Adilabad.
2 The Regional Forest Officer, Jannaram, Adilabad.
3 The Forest Range Officer, Birsaipet, Adilabad.

4 2 CCs to the Govt. Pleader for Forests, High Court Buildings,

Hyderabad (OUT).

5 2 CD copies.